

## **Rye City Planning Commission Minutes**

January 14, 2003

### **PRESENT:**

Michael W. Klemens, Chairman  
Peter Larr, Vice-Chairman  
Franklin Chu  
Hugh Greechan  
Martha Monserrate  
Barbara Cummings

### **ABSENT:**

Patrick McGunagle

### **ALSO PRESENT:**

Christian K. Miller, AICP, City Planner  
George M. Mottarella, P.E., City Engineer  
Joseph Murphy, Chairman, Conservation Commission/Advisory Council (CC/AC).  
James McGee, CC/AC

Chairman Klemens called the regular meeting to order in the Mayor's Conference Room of the City Hall and noted that a quorum was present to conduct official business.

## **I. ANNUAL ORGANIZATIONAL MEETING**

### **1. Election of Officers**

The Chairman announced that he and Martha Monserrate had been appointed to the Planning Commission for another term. He also noted that Patrick McGunagle was appointed to the Commission, but that he could not attend the Planning Commission meeting due to a family emergency.

Peter Larr announced that he was stepping down as Vice-Chairman. He noted that he served as Vice-Chair for five years and felt that the Commission would benefit from a new member serving in that position. Mr. Larr nominated Barbara Cummings for the Vice-Chairman position. Ms. Cummings accepted the nomination.

On a motion made by Peter Larr, seconded by Martha Monserrate and carried by the following vote:

AYES: Michael Klemens, Peter Larr, Franklin Chu, Barbara Cummings, Hugh Greechan, Martha Monserrate

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NAYS: None

RECUSED: None

ABSENT: Patrick McGunagle

the Planning Commission took the following action:

**ACTION:** The Planning Commission elected Barbara Cummings as Vice-Chairman.

### 2. Other Organization Business

Consistent with prior practice the Planning Commission reviewed and unanimously agreed to the following policies for 2003:

- Planning Commission meetings should end no later than 11:30 PM.
- At 11:00 PM the Chairman will assess how many more agenda items there are to be discussed, the Planning Commission will decide on how many more it will be able to entertain, and the other Applicants will be advised that their items will be postponed to the next meeting.
- The Chairman will review a tentative agenda with the City Planner before the City Planner formally issues the agenda and may postpone, if necessary, non-critical items if he feels that there are too many items for the Planning Commission and the City Planner to address that evening and, thereby, keep the agenda manageable for both the Planning Commission and the City Planner.
- The Chairman will try to keep reiteration at the work session of statements already made by the public at the public hearing, held earlier in the meeting, to a minimum.
- To streamline the meetings, and the preparation of the minutes by the City Planner, Planning Commission members are asked to refrain from asking questions and making statements at public hearings that can be asked and made at the work session that follows.
- The Planning Commission and the City Planner will strictly adhere to not acting on late submissions. The City Planner will not place anything on the agenda unless all of the required materials are submitted by the submission deadline. The Planning Commission will not accept or consider materials submitted at the meeting, unless submitted as part of a public hearing, except for materials from the staff or other city agencies. If an applicant or the public wishes to submit materials after the meeting

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1 packets go out they will be submitted to the City Planner and go out in the next  
2 regular meeting packet.  
3  
4

5 The Chairman discussed the City Planner's memorandum requesting that the Planner's  
6 Reports and comments of the BAR and CC/AC be made public. The Chairman stated that  
7 since he had not received the memo until right before the meeting that he was not prepared  
8 to hold the discussion tonight. The Chairman noted that the City Planner felt very strongly  
9 about the issue and that it deserved consideration. He encouraged Commission members  
10 to discuss the issue with the City Planner before its next meeting.  
11

12 The Commission noted that unless the Commission was required by law to release these  
13 reports to the public, they should not be released due to potential exposure to law suits.  
14 The City Planner advised that the Commission is not required by law to release the reports,  
15 but that it was a good practice. The Commission requested that the Corporation Counsel  
16 provide an opinion as the legal issues in releasing such reports. The Commission agreed  
17 to discuss the matter at its next meeting early in the agenda.  
18

## **II. HEARINGS**

### **1. Barber (Phillips Lane)**

23 The Chairman noted that the hearing was a continuation from its prior meeting on  
24 December 10, 2002.

25 Janet Giris (applicant's attorney) provided an overview of the application noting that it  
26 involves the demolition and construction of a new 5,350 square-foot residence within the  
27 100-foot wetland buffer of Long Island Sound. Ms. Giris noted that the application was first  
28 submitted to the Commission in March 2002 and was revised in response to comments  
29 made at a site walk. Ms. Giris noted that the revised plan reduced the extent of impervious  
30 area in the wetland buffer from approximately 2,800 square feet to 787 square feet, which  
31 is approximately the same amount of impervious area in the buffer associated with the  
32 existing residence.  
33

34 Ms. Giris provided an overview of the proposed mitigation plan, which she noted had been  
35 significantly revised to address the concerns of the Butlers (adjacent neighbor). She noted  
36 that the mitigation plan includes a variety of drainage provisions and 1,600 square feet of  
37 wetland mitigation planted area. Ms. Giris acknowledged that the Commission is in  
38 receipt of a letter from Mr. Bean (Butler's attorney) expressing concerns with the  
39 application, but she indicated that the revised plan presented to the Commission  
40 addresses those concerns.  
41

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1 Bob Roth (applicant's engineer) provided an engineering overview of the application  
2 including revisions in the plan to address the drainage concerns of the Butlers. He noted  
3 that the application would not result in significant grading activity and that the proposed  
4 improvements were close to existing contours. He noted that the plans provide for positive  
5 drainage to allow off-site stormwater to continue to flow across the applicant's property to  
6 an existing catch basin from the adjacent Butler property. Mr. Roth discussed the  
7 proposed under drain system within the mitigation area and the piping that would be  
8 provided under the proposed driveway to allow for the conveyance of stormwater across  
9 the property.

10  
11 Mr. Bean addressed the Commission reiterating the comments provided in his January 14,  
12 2003 letter. The Commission questioned why his letter was submitted at such a late date.  
13 Mr. Bean responded that due to the holidays and other considerations neither he nor the  
14 Butler's consultants were able to review the revised site plans in advance of the meeting.  
15 He also noted that he had expected that the comments in the letter to have been  
16 addressed by the applicant, prior to his submission. Ms. Giris responded that most of the  
17 items in Mr. Bean's letter had been addressed. The Commission agreed to discuss the  
18 letter and the application in its work session.

19  
20 On a motion made by Peter Larr, seconded by Barbara Cummings and carried by the  
21 following vote:

22  
23 AYES: Michael Klemens, Peter Larr, Franklin Chu, Barbara Cummings, Hugh  
24 Greechan, Martha Monserrate

25 NAYS: None

26 RECUSED: None

27 ABSENT: Patrick McGunagle

28  
29 the Planning Commission took the following action:

30  
31 **ACTION:** The Planning Commission closed the public hearing on wetland permit  
32 application number WP108.

### 33 34 **2. Restaurant Zemack**

35  
36 The Chairman Read the public notice into the record.

37  
38 Andrew Baekey (applicant's architect) gave an overview of the project and presented  
39 revised drawings, illustrating the defined patron area, as requested the Commission at it's  
40 last meeting. The revised plans showed the elimination of the wrap-around bar and the

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1 creation of a wall between the kitchen area and the dining area, clearly limiting the access  
2 the patrons have to the kitchen area.

3  
4 There were no public comments concerning the application.

5  
6 On a motion made by Peter Larr, seconded by Hugh Greechan and carried by the following  
7 vote:

8  
9 AYES: Michael Klemens, Peter Larr, Franklin Chu, Barbara Cummings, Hugh  
10 Greechan, Martha Monserrate

11 NAYS: None

12 RECUSED: None

13 ABSENT: Patrick McGunagle

14  
15 the Planning Commission took the following action:

16  
17 **ACTION:** The Planning Commission closed the public hearing on final site plan  
18 application number SP267.

### 19 20 **3. 95 Wappanocca**

21  
22 The Commission noted that the applicant failed to properly circulate the public notice as  
23 required by law and that such a deficiency would require the re-scheduling of the public  
24 hearing.

25  
26 On a motion made by Michael Klemens, seconded by Peter Larr and carried by the  
27 following vote:

28  
29 AYES: Michael Klemens, Peter Larr, Franklin Chu, Barbara Cummings, Hugh  
30 Greechan, Martha Monserrate

31 NAYS: None

32 RECUSED: None

33 ABSENT: Patrick McGunagle

34  
35 the Planning Commission took the following action:

36  
37 **ACTION:** The Planning Commission set a public hearing for wetland permit application  
38 number WP121 for its next meeting on February 11, 2003.

### 39 40 **III. ITEMS PENDING ACTION**

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### 1. Barber (Phillips Lane)

Ms. Giris noted that the Commission received in its latest submission a revised EAF that reflects the applicant's most recent site plan.

The Commission questioned the need for blasting. Mr. Patterson (applicant's architect) explained that blasting would not be required and that the plan involves digging down to the existing rock ledge to create a crawlspace

The Commission requested changes in the piping system to allow for more infiltration and a more environmentally sensitive design. The Commission discussed other plan modifications to make the proposed drainage system more consistent with the sand filter design that the Commission had suggested the applicant pursue at the December 10, 2002 meeting. Mr. Roth provided an overview of the drainage design including the proposed under drain around the perimeter of the wetland mitigation area. The Commission requested that the design be improved to increase the elevation of the proposed catch basin to provide for more infiltration opportunities for the first flush of stormwater.

The Commission discussed and deliberated at great length the drainage aspects of the proposed plan and each of the comments in Mr. Bean's letter dated January 14, 2003. The Commission, Mr. Bean and Ms. Giris went through each item of the letter and consensus was reached by all parties that the plans should be revised as follows:

- The applicant should be required to submit an "as-built" survey prior to the issuance of a certificate of occupancy confirming that the plan was properly implemented.
- The drainage detail and plans should be revised to increase the height of the western drain inlet elevation.
- A new pipe should be added to the plan extending from the rear yard (at approximately elevation 10) to the front yard to the drainage area on the eastern side of the house.
- The plans should be revised to change the proposed pipe in the front yard from 4" DIP to 6" perforated pipe. It also noted that the need for a cast iron sleeve should be noted for that portion of the pipe under the proposed driveway.
- The site plan should be revised to include a note that positive drainage will be provided and that the proposed project will not impede existing natural drainage flow. It was noted that this note is particularly relevant to proposed driveway and curbing.

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- 1 • The large tree in the rear yard near Long Island Sound should be added to the plan and  
2 noted that it is intended to be preserved.
- 3 • At the request of the City Engineer, a detail or note should be provided indicating that a  
4 saddle will be provided for the direct connection of roof leaders to the existing  
5 stormwater pipe along the southern property line.
- 6 • The plan should be revised to indicate the location of potential stockpiling in the rear  
7 yard. A note should be added on the plan indicating that there shall be no stockpiling  
8 with the 100-year flood zone (elevation 12).
- 9 • The plan should be revised to enhance the soil and erosion control notes/details to  
10 show silt fence, hay bales and use of seed mix on stockpiles.

11  
12 The Commission concluded its discussion by agreeing that the applicant submit revised  
13 plans and that a resolution of approval be provided for its consideration for February 11,  
14 2003 meeting.

### 15 16 **2. Restaurant Zemak**

17  
18 The Commission noted that it was satisfied with the revised plans and the draft resolution  
19 approving the final site plan application.

20  
21 On a motion made by Peter Larr, seconded by Franklin Chu and carried by the following  
22 vote:

23  
24 AYES: Michael Klemens, Peter Larr, Franklin Chu, Barbara Cummings, Hugh  
25 Greechan, Martha Monserrate

26 NAYS: None

27 RECUSED: None

28 ABSENT: Patrick McGunagle

29  
30 the Planning Commission took the following action:

31  
32 **ACTION:** The Planning Commission conditionally approved final site plan application  
33 number SP267.

### 34 35 **3. Walker Subdivision**

36  
37 The City Planner provided the Commission with a copy of survey of the adjacent Clark  
38 property. Ms. Clark provided a copy of the survey to more accurately show the location of

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1 her residence to the Walker property line and proposed driveway. Ms. Clark showed the  
2 Commission the approximate location of her septic field.

3  
4 The Commission inquired as to which alternative subdivision it preferred. Beth Evans  
5 (applicant's environmental consultant) noted that the applicant was willing to pursue the  
6 two-lot alternative with driveway access from Manursing Way, but noted that the  
7 Commission required the applicant to provide two alternatives with driveway access from  
8 Forest Avenue.

9  
10 The Commission noted the two-lot alternative involved wetland buffer disturbance and that  
11 it did not request a three-lot plan. The Commission noted that under the City Wetlands Law  
12 it was required to consider reasonable and practical alternatives that eliminate wetland or  
13 wetland buffer impacts.

14  
15 Ms. Evans noted that the three-lot alternative with common driveway access from Forest  
16 Avenue along the southern property line was preferred over the alternative with a driveway  
17 along the northern property line. Ms. Evans noted that the southern alignment preserves  
18 many trees, provides greater separation from the existing residence and would be  
19 sensitively sited to minimize impacts to the adjacent neighbors on Rockridge Road.

20  
21 Linda Whitehead (applicant's attorney) added that the driveway along the northern property  
22 line has limited sight distance. Ms. Whitehead further noted that the northern alignment is  
23 very close to the existing residence and has a significant impact on its marketability and  
24 expansion potential.

25  
26 The City Engineer noted that the two, three-lot alternatives involve a common driveway,  
27 which will require a turn-around area for refuse vehicles.

28  
29 The Commission reiterated its prior request to enhance the wetland buffer if a three-lot  
30 alternative is selected.

31  
32 The Commission discussed the potential overall benefit of a two-lot alternative with wetland  
33 buffer disturbance as compared to a three-lot alternative without wetland buffer  
34 disturbance. The Commission noted that the wetland buffer disturbance is discouraged by  
35 the City's Wetlands Law, however, if substantial mitigation were provided in might actually  
36 result in a net environmental benefit over a three-lot alternative or even a pre-development  
37 condition. The Commission suggested, for instance, that if a substantial planted buffer was  
38 provided and secured in a conservation easement held by a third party (such as the  
39 adjacent Edith Reed Sanctuary) that such a concept might be supported by the Wetlands  
40 Law. The plan could be further enhanced, the Commission noted, if the applicant were to  
41 provide an easement for the possible future extension of a sewer line across the



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1 applicant's property to Forest Avenue from the adjacent Clark property. The Commission  
2 noted that creating opportunities to reduce the number of septic systems near wetland  
3 areas is considered an environmental benefit.

4  
5 To further explore this concept the Commission requested that it would like to conduct  
6 another site walk of the property prior to its next meeting. The Commission requested that  
7 the applicant stake out the various driveway alignments and noted that it will walk the  
8 alignment of the proposed driveway from Manursing Way. Ms. Evans agreed to the  
9 Commission's request.

10  
11 The City Planner noted that the Commission should consider scheduling a hearing to  
12 receive public comment on the application, given that neighbor concerns are anticipated.  
13 The Commission noted that it would be premature to schedule a hearing until it has  
14 reached a determination as to whether each of the three alternatives are viable from a  
15 planning and legal perspective.

### **4. Presentation by Westchester County**

16  
17  
18  
19 Hugh Greechan noted that he was recusing himself from the matter because he is a  
20 Westchester County employee involved in the development of the plans for the project.

21  
22 The Commission noted that it had received some additional information since its last  
23 meeting regarding the Westchester County project. The Commission noted that NYSDEC  
24 had determined that the project was an "Unlisted" Action under SEQRA and that the  
25 agency had issued a Negative Declaration. The NYSDEC Negative Declaration  
26 acknowledged the presence of King Rail (a threatened species) within the project area and  
27 lists mitigation measures to protect the species during construction. The Commission  
28 noted that Westchester County had determined that the project was a "Type II" Action under  
29 SEQRA.

30  
31 The Commission agreed that the City should follow the direction of New York State, which  
32 is a higher level of government, and consider the application subject to SEQRA and LWRP  
33 Coastal Consistency review. The Commission noted that the project will provide an  
34 environmental benefit, which warrants a Negative Declaration and which is consistent with  
35 the City's LWRP.

36  
37 On a motion made by Franklin Chu, seconded by Peter Larr and carried by the following  
38 vote:

39  
40 AYES: Michael Klemens, Peter Larr, Franklin Chu, Barbara Cummings, Martha  
41 Monserrate

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NAYS: None

RECUSED: Hugh Greechan

ABSENT: Patrick McGunagle

the Planning Commission took the following action:

**ACTION:** The Planning Commission agreed to direct the City Planner and Chairman to transmit a memorandum to the Rye City Council recommending that the Council consider the Westchester County project an "Unlisted" action under SEQRA, adopt a Negative Declaration and find that the project is consistent with the policies of the Rye City LWRP.

### 5. Review of House Scale Report

The Commission noted receipt of the report prepared by the House Scale Sub-Committee to address concerns regarding the size, bulk and scale of new residential construction. The Commission commended the work of the sub-committee, but noted concern with the possible fiscal impact of the regulations and possible reductions in tax revenue. The Commission also noted concern with the equity of the proposed recommendations. They requested that the sub-committee address whether the proposed regulations might disproportionately impact Rye's smaller residential properties and prohibit families from making modest additions to their homes.

The Commission discussed the proposed moratorium. While there was no roll call vote, many members noted concern with the moratorium and suggested that the City Council work to implement the recommendations.

The Commission agreed to send any additional feedback on the report to the City Planner who will prepare a memorandum to the City Council regarding the Commission's comments.

### 6. Other Correspondence

The Commission noted the receipt of a letter from the Warners and Kuntzs regarding the continuing flooding that has occurred on their properties since the Commission's approval of the Killian wetland restoration plan.

The Commission discussed the receipt of a lead agency designation letter from Westchester County regarding the possible extension of a driveway from Manursing Way to Edith Reed Sanctuary. The Commission noted that it did not desire lead agency status under SEQRA, but suggested that the County be advised that LWRP Coastal Consistency

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1 approval would be required by the City. The Commission also noted concern regarding  
2 the potential alignment of the new access drive relative to existing wetlands in the area.

### **7. Minutes**

5  
6 The Planning Commission reviewed and approved the minutes of its December 10, 2002  
7 meeting.

8  
9 There being no further business the Commission unanimously adopted a motion to adjourn  
10 the meeting at approximately 11:00 p.m.

11  
12 Christian K. Miller, AICP  
13 City Planner  
14